

1 Kathleen Sullivan (SBN 242261)
kathleensullivan@quinnmanuel.com
2 QUINN EMANUEL URQUHART &
SULLIVAN LLP
3 51 Madison Avenue, 22nd Floor
New York, NY 10010
4 Telephone: (212) 849-7000
Facsimile: (212) 849-7100
5
6 Sean S. Pak (SBN 219032)
seanpak@quinnmanuel.com
John M. Neukom (SBN 275887)
7 johnneukom@quinnmanuel.com.
QUINN EMANUEL URQUHART &
8 SULLIVAN LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
9 Facsimile: (415) 875-6700
10
11 Mark Tung (SBN 245782)
marktung@quinnmanuel.com
12 QUINN EMANUEL URQUHART &
SULLIVAN LLP
13 555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
14 Telephone: (650) 801-5000
Facsimile: (650) 801-5100
15
16 *Attorneys for Plaintiff Cisco Systems, Inc.*

Steven Cherny (*admission pro hac vice pending*)

steven.cherny@kirkland.com

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Adam R. Alper (SBN 196834)

adam.alper@kirkland.com

KIRKLAND & ELLIS LLP

555 California Street

San Francisco, California 94104

Telephone: (415) 439-1400

Facsimile: (415) 439-1500

Michael W. De Vries (SBN 211001)

michael.devries@kirkland.com

KIRKLAND & ELLIS LLP

333 South Hope Street

Los Angeles, California 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF MARK TUNG IN
SUPPORT OF CISCO'S OPPOSITION TO
ARISTA'S MOTION TO AMEND
SCHEDULING ORDER**

1 I, Mark Tung, declare as follows:

2 1. I am an attorney-at-law, duly licensed to practice before this Court, and am an
 3 attorney with the law firm of Quinn Emanuel Urquhart & Sullivan LLP, attorneys for Plaintiff
 4 Cisco Systems, Inc. ("Cisco") in the above-captioned case. The matters set forth herein are
 5 within my personal knowledge and if called and sworn as a witness I could competently testify
 6 regarding them.

7 2. Attached to this declaration as **Exhibit 1** is a true and correct copy of Arista's
 8 Q3'2015 Highlights, dated November 2015.

9 3. Attached to this declaration as **Exhibit 2** is a true and correct copy of Cisco's
 10 Fourth Supplemental Objections and Responses to Arista's First Set of Interrogatories (2 and 5),
 11 served on Arista October 14, 2015.

12 4. Attached to this declaration as **Exhibit 3** is a true and correct copy of the certified
 13 copy of U.S. patent no. 7,047,526.

14 5. Attached to this declaration as **Exhibit 4** is a true and correct copy of the certified
 15 copy of U.S. patent no. 7,953,886.

16 6. Attached to this declaration as **Exhibit 5** is a true and correct copy of an article
 17 from Network World entitled "How Arista Networks got out in front of the SDN craze: Arista
 18 CEO Jayshree Ullal says 'cloud networking leader' complements Cisco" and dated February 22,
 19 2013. This article was produced by Cisco in this case and bears Bates numbers CSI-ANI-
 20 00381280-83.

21 7. Attached to this declaration as **Exhibit 6** is a true and correct copy of an email
 22 chain involving, *inter alia*, Jayshree Ullal, Anshul Sadana, Mark Foss, Andreas Bechtolsheim, and
 23 Adam Sweeney, dated July 17-21, 2009. Exhibit 6 bears Bates numbers ANI-ITC-944_945-
 24 3453648-50. That document was designated by Arista in U.S.I.T.C. Inv. Nos. 337-TA-944 and
 25 337-TA-945 as containing "CONFIDENTIAL BUSINESS INFORMATION – SUBJECT TO
 26 PROTECTIVE ORDER." Pursuant to the Protective Order (Dkt. 53 at 6), this document is
 27 deemed to have been designated by Arista in this case as "HIGHLY CONFIDENTIAL –
 28 ATTORNEYS' EYES ONLY" information.

1 8. Attached to this declaration as **Exhibit 7** is a true and correct copy of Fortune
 2 Magazine's March 20, 2014 article entitled "An Ex-Cisco Exec Reflects." This article was
 3 produced by Cisco in this case and bears Bates numbers CSI-CLI-00356028-33.

4 9. Attached to this declaration as **Exhibit 8** is a true and correct copy of an e-mail
 5 from James Lingard to eng@arastra.com, dated April 14, 2006. Exhibit 8, which bears Bates
 6 numbers ANI-ITC-944_945-1713891-92, has been excerpted from a document produced by Arista
 7 that bears Bates numbers ANI-ITC-944_945-1713831-6142. That document was designated by
 8 Arista in U.S.I.T.C. Inv. Nos. 337-TA-944 and 337-TA-945 as containing "CONFIDENTIAL
 9 BUSINESS INFORMATION – SUBJECT TO PROTECTIVE ORDER." Pursuant to the
 10 Protective Order (Dkt. 53 at 6), this document is deemed to have been designated by Arista in this
 11 case as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information. Cisco has
 12 filed a partially-redacted copy of Exhibit 8 under seal.

13 10. Attached to this declaration as **Exhibit 9** is a true and correct copy of a blog
 14 posting by Arista CTO Kenneth Duda entitled "Linux as a Switch Operating System: Five Lessons
 15 Learned," dated November 5, 2013 and available at [https://eos.arista.com/linux-as-a-switch-](https://eos.arista.com/linux-as-a-switch-operating-system-five-lessons-learned/)
 16 [operating-system-five-lessons-learned/](https://eos.arista.com/linux-as-a-switch-operating-system-five-lessons-learned/). This article was produced by Cisco in this case and bears
 17 Bates number CSI-CLI-00540078-79.

18 11. Attached to this declaration as **Exhibit 10** is a true and correct copy of excerpts
 19 from the transcript of the September 30, 2015 hearing in the above-captioned case.

20 12. Attached to this declaration as **Exhibit 11** is a true and correct copy of excerpts
 21 from the transcript of Arista's presentation at the Barclays Global Tech Conference on December
 22 9, 2014. This document was produced by Cisco in this case and bears Bates numbers CSI-CLI-
 23 00357842 – CSI-CLI-00357855

24 13. Attached to this declaration as **Exhibit 12** is a true and correct copy of an October
 25 15, 2015 letter from Elizabeth McCloskey, counsel for Arista, to Matthew Cannon, counsel for
 26 Cisco.

27 14. Attached to this declaration as **Exhibit 13** is a true and correct copy of a September
 28 14, 2015 email from David Rosen, counsel for Arista, to Jason Liu, counsel for Cisco.

1 15. Attached to this declaration as **Exhibit 14** is a true and correct copy of an October
2 16, 2015 email from Elizabeth McCloskey, counsel for Arista, to Cisco's counsel.

3 16. Attached to this declaration as **Exhibit 15** is a true and correct copy of an October
4 21, 2015 email from David Rosen, counsel for Arista, to Peter Klivans, counsel for Cisco.

5 17. Attached to this declaration as **Exhibit 16** is a true and correct copy of July 21,
6 2015 letter from Matthew Cannon, counsel for Cisco, to Elizabeth McCloskey, counsel for Arista.

7 18. Attached to this declaration as **Exhibit 17** is a true and correct copy of an October
8 30, 2015 letter from Peter Klivans, counsel for Cisco, to Elizabeth McCloskey, counsel for Arista.

9 19. Attached to this declaration as **Exhibit 18** is a true and correct copy of excerpts
10 from the transcript of transcript of the November 5, 2015 hearing in the above-captioned case.

11 20. Attached to this declaration as **Exhibit 19** is a true and correct copy of an email
12 chain involving Adam Sweeney and Kenneth Duda, dated July 9-12, 2010. Exhibit 19 bears Bates
13 numbers ANI-ITC- 944_945-3599339-40. That document was designated by Arista in U.S.I.T.C.
14 Inv. Nos. 337-TA-944 and 337-TA-945 as containing "CONFIDENTIAL BUSINESS
15 INFORMATION – SUBJECT TO PROTECTIVE ORDER." Pursuant to the Protective Order
16 (Dkt. 53 at 6), this document is deemed to have been designated by Arista in this case as
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information. This document was
18 ordered unsealed, Dkt. 86.

19 21. Attached to this declaration as **Exhibit 20** is a true and correct copy of Cisco's
20 Preliminary Election of Asserted Claims, served on Arista on November 4, 2015.

21 22. Attached to this declaration as **Exhibit 21** is a true and correct copy of excerpts
22 from the transcript of the May 14, 2015 Case Management Conference in the above-captioned
23 case.

24 23. Attached to this declaration as **Exhibit 22** is a true and correct copy of Arista's
25 Second Set of Interrogatories, served on Cisco on July 24, 2015.

26 24. To date, Arista has not served a corporate 30(b)(6) deposition notice on Cisco, nor
27 has Arista requested an opportunity to inspect the source code records or change logs that were
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identified in Cisco's interrogatory responses as containing information about the creation of its CLI command expressions.

25. Arista deposed Jung Tjong on November 11, 2015 and Jeffrey Wheeler on November 12, 2015. Kirk Lougheed's deposition is scheduled for November 20, 2015 and Kevin Almeroth's deposition is scheduled for November 23, 2015. Documents for these witnesses have been produced well in advance of their depositions.

26. To date, Cisco has produced 1,329,754 pages of documents in this case, excluding documents previously produced in the ITC case and documents produced in native format.

9 27. On June 4, 2015 and September 11, 2015, Cisco served Infringement Contentions
10 and Amended Infringement Contentions on Arista. On July 20, 2015 and October 23, 2015,
11 Arista served Invalidity Contentions an Amended Invalidity Contentions on Cisco.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this declaration on November 18, 2015 at Redwood Shores, California.

/s/ Mark Tung
Mark Tung

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Mark Tung (Bar No. 245782).

/s/ John M. Neukom

John M. Neukom (Bar No. 275887)